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Managed Care Litigation Update®

NEWSWORTHY

District court remands claims by ER groups alleging underpayment under quantum meruit, the New Jersey Health Claims Authorization, Processing and Payment Act, tortious interference, and NJ RICO and determines ERISA does not preempt such claims. The court concluded that plaintiff's claims are "premised on implied agreements and representations arising in the course of the parties dealings" rather than assignments of benefits. *Atlantic ER Physicians Team, Pediatrics Assoc. PA, et al. v. Unitedhealth Group, Inc., et al.*, USDC D NJ, No. 20-20083, (Doc. 38, Sept. 30, 2021). Previously reported in *MCLU Vol. 167*.

District court grants MSJ in favor of ERISA plan denying subsequent 63 days of residential treatment at Elevations and Cherry Gulch after authorizing 81 days of treatment. The court upheld the decision of lack of medical necessity and further dismissed the MHPAEA claim on the grounds plaintiff failed to show a nexus between the alleged parity violation and the denial. *Christine S., et al. v. Blue Cross Blue Shield of New Mexico, et al.*, USDC D UT, No. 2:18-cv-874-JNP-DBP, (Doc. 103, Oct. 14, 2021). Previously reported in *MCLU Vol. 116*.

District court grants ERISA plan's motion to dismiss where plan denied pre-approved oral surgery. The Court dismissed plaintiff's 502(a)(3) claim as duplicative of the 502(a)(1)(B) claim but granted leave to amend. *Wisbar v. Health Care Serv. Corp.*, USDC MD LA, No. 20-cv-732-JWD-EWD, (Doc. 27, filed Sept. 27, 2021). Previously reported in *MCLU Vol. 163*.

RECENTLY FILED ACTIONS

Member seeks approximately $43,000 in ERISA benefits associated with treatment following motorcycle accident. Plaintiff alleges he was mistakenly dropped from the group policy despite representations from the agent that the "cancelled paperwork was incorrect," even though premium payments continued.

Alleged assignee of member and air ambulance provider seeks ERISA benefits associated with air ambulance transport from Dominican Republic to Broward Medical Center in Fort Lauderdale, Florida to treat myocardial infarction. The claim was denied as not medically necessary.

Alleged assignee of member and air ambulance provider seeks ERISA benefits associated with air ambulance transportation from the Bahamas to St. Joseph's Hospital in Tampa, Florida to treat an acute cardiac episode. The claim was denied on the grounds the nearest facility that could provide appropriate care was in Nassau.

RECENTLY FILED ACTIONS

OON plastic surgeon and alleged assignee of three claims seeks $130,821.80 in ERISA benefits and alleges underpayment associated with emergency surgeries. Billed charges are patient 1 were $4,635 and the amount paid was $1,234. Billed charges on patient 2 were $111,550 and the amount paid was $1,358.57, and CPT code 15734 was denied. Billed charges on patient 3 were $19,010 and the amount paid was $1,483.85, with an additional $296.78 attributed to coinsurance.

Removed action in which auto liability insurer challenges coordination of benefits provisions of health plan and seeks declaration that [ ] is primary payor under the Michigan No Fault Act, along with associated recovery of previously paid benefits.

Member seeks ERISA benefits associated with residential inpatient treatment at Telos Residential Treatment Center, LLC and alleges violations of the MHPAEA. An initial unidentified period of treatment at Telos was covered, but treatment from September 5, 2018 forward was denied as not medically necessary pursuant to the [ ] Level of Care Guideline for Mental Health Residential Treatment Center Level of Care.

Emergency medicine provider seeks benefits and alleges underpayment. Billed charges were $223,988 and the amount paid was $33,384.19. Other actions filed by this provider are reported in multiple prior MCLU Vols.

Member seeks ERISA benefits associated with residential inpatient care at Evoke at Entrada and alleges violations of MHPAEA. The claim was denied for lack of prior authorization.

Removed action in which assignee of OON hospital alleges underpayment of 37 claims in the amount of $2,337,560.18 on billed charges of $2,675,415. Other cases filed by this provider are reported at MCLU Vol. 57, 61, 65, 67, 83, 85, 99, 106, 107, 126, 156.

Administrator seeks to recoup on behalf of ERISA plans overpayments to laboratory which is alleged to have encouraged "expensive and medically unnecessary testing," including "manipulating people into thinking they need all three Covid tests" and in some cases charging ten times the price of other labs for the same tests.

Removed action in which various ER staffing groups seek more than $53 million in benefits and allege underpayment of emergency claims since 2016. Plaintiffs allege violations of FL St. 627.64194 and 641.513.

Member seeks ERISA benefits associated with residential treatment at Elevations Residential Treatment Center and alleges violations of the MHPAEA and associated California parity laws. Plaintiff alleges the level of care guidelines utilized in denying the claim fall below those required in *Wit*.

Member seeks ERISA benefits from self-funded plan associated with two episodes of residential treatment at Waypoint Academy and alleges violations of MHPAEA. The claims for each admission were denied because the facility did not have a provider on duty 24/7.

Removed action in which in-network ENT physician alleges underpayment of $86,670.31. Physician asserts her requests for mediation and arbitration pursuant to the contract were ignored. Plaintiff further states that the plan is inappropriately using the multi-procedure reductions in violation of the contract.

ADDITIONAL NEWSWORTHY (REGULATORY)

DHHS, DOL, Dept. of the Treasury, and OPM jointly issue an interim final rule, Part II of the requirements related to the No Surprises Act, which establishes a presumption that the qualifying payment amount (QPA) is the appropriate out-of-network rate in the arbitration of out-of-network payment disputes under the federal regime. The statute and Part I of the regulations explained that the QPA will often be a plan's median contracted rate. Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980-01, (Oct. 7, 2021).

Mitchell Hasenkampf leads the firm's compliance practice group, which advises clients on matters including utilization review and prompt pay requirements for government and commercial plans, Member incentives, marketing and member communications, and Grievance and Appeal processes.

MCLU is online and searchable.

The underlying database to this publication, containing over 3,000 federal cases reported in this publication, is online. The Case Description field is word searchable. Searches can also be performed by Payer, Date Range, District Court and/or Court of Appeal, citation, or Judge. Past issues are available for immediate download.

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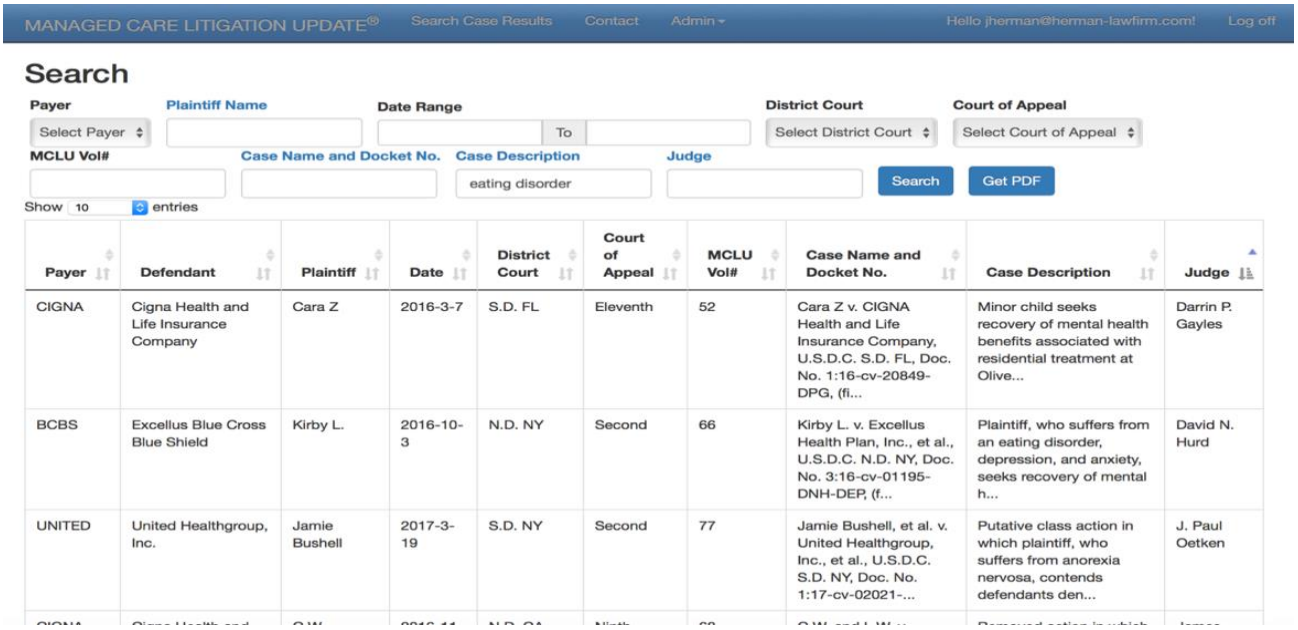

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...	Minor child seeks recovery of mental health benefits associated with residential treatment at Olive...	Darrin P. Gayles
BCBS	Excellus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excellus Health Plan, Inc., et al., U.S.D.C. N.D. NY, Doc. No. 3:16-cv-01195-DNH-DEP, (f...	Plaintiff, who suffers from an eating disorder, depression, and anxiety, seeks recovery of mental h...	David N. Hurd
UNITED	United Healthgroup, Inc.	Jamie Bushell	2017-3-19	S.D. NY	Second	77	Jamie Bushell, et al. v. United Healthgroup, Inc., et al., U.S.D.C. S.D. NY, Doc. No. 1:17-cv-02021-...	Putative class action in which plaintiff, who suffers from anorexia nervosa, contends defendants den...	J. Paul Oetken

ABOUT THE AUTHOR

Jonathan M. Herman is the founding member of Herman Law Firm, which represents health insurers, plan administrators, and self-funded plans in reimbursement disputes and compliance matters. He is also on the Roster of Arbitrators for the American Arbitration Association (Healthcare, Commercial) and a Neutral for the American Health Lawyers Association.

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